



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: UI-2021-001352  
IA/01893/2020

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11 May 2022  
Extempore**

**Decision & Reasons Promulgated  
On 13 September 2022**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**W K  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Mohsan, instructed by C B Solicitors

For the Respondent: Ms N Willcocks-Briscoe, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Juss promulgated on 10 August 2021 dismissing his appeal against a decision of the Secretary of State made on 27 October 2020 to refuse to grant him asylum and to refuse his humanitarian protection and human rights claims.
2. The appellant is a citizen of Afghanistan born in 1993. On his account he left the country in 2009 travelling from Iran, Turkey, Greece, Italy and

France before entering the United Kingdom where he was apprehended as an illegal entrant on 12 April 2016. He claimed asylum and subsequent to his screening interview was removed to Belgium pursuant to the Dublin III Regulation. He was then removed from Belgium to Afghanistan in 2016 or 2017. On his account, he tried to live in Kabul for a short time but that was not possible. He then went on to return to his home village in Laghman Province where he says he came to the adverse attention again of the Taliban who abducted him, forced him to work for them, and it was only after a period he was able to escape with the assistance of others; he then made his way back to the United Kingdom.

3. The appellant's case is that his problems began in 2009 when he was approached by the Taliban to give them shelter in his father's shop, he declined to do so offering them in the alternative the possibility of staying in the family home which was declined. Shortly after that there was fighting in the area, certain of the Taliban were killed and/or captured and the Taliban came to the family home accusing the appellant of having been an informant for them. It is also part of the appellant's case that he was perceived to be an informant for the Taliban by the Afghan government. He also said that he cannot return to Afghanistan because he was at risk of the Taliban. It is also his case that he would be at risk there not only of persecution for the purposes of the Refugee Convention but that to return him would be a breach of his Article 3 rights. It is also said that to remove him there would be in breach of his Article 8 rights as he met the criteria of paragraph 276ADE(1)(vi) of the Immigration Rules.
4. The Secretary of State did not accept the appellant's account of what had happened to him in Afghanistan and did not consider that there was any reason why he could not relocate in any event to Kabul as a single, able-bodied man. The Secretary of State rejected also his claim to meet the requirements of the Immigration Rules.
5. The judge heard evidence from the appellant and sets out in his decision the salient facts of the claim, [2] to [4] and [5] to [9] a summary of the refusal letter. The judge then goes on to set out the evidence in the hearing including the objective evidence he had taken into account. He then went on to direct himself in accordance with the relevant law at [12] and [13], and summarised the background evidence and the skeleton argument [14].
6. The judge found that the appellant was not of interest to the Taliban giving his reasons at paragraphs 15, 16 and 17. He also concluded that the appellant had not provided credible reasons as to why he would be perceived of being pro-Taliban by the government. In doing so he had regard [20] to the then most recent CPIN of June 2020. The judge then concluded [21] that the appellant was not a refugee as he had not established a well-founded fear of persecution and thus could not qualify for humanitarian protection either. The judge then rejected the human rights claim finding [23] that he could not succeed under paragraph 276ADE(1) for the reasons given in the refusal letter and there was

nothing else why he should be entitled to remain outside the Immigration Rules.

7. The appellant sought permission to appeal on three grounds upon which permission was granted:
  - (i) the judge failed properly to set out the material facts;
  - (ii) the judge failed to give adequate reasons for rejecting the appellant's claim pursuant to paragraph 276ADE(1)(vi);
  - (iii) the findings with respect to Article 3 were unsafe.
8. I deal with the grounds in turn.
9. Despite the grounds and what Mr Mohsan has submitted, I do not consider that the judge had failed properly to set out the salient facts of the case. Whilst it is averred at paragraphs 3 to 4 of the grounds that the judge appears to have misunderstood the chronology it is sufficiently clear from the decision that the judge had had regard to the fact that the appellant had been returned from Belgium to Afghanistan and then travelled to his home area; the judge refers to that. It is also clear from the judge's decision that he had studied carefully the witness statement which the appellant had produced which sets that out and to the refusal letter which does so similarly. It is simply not sustainable to say that the judge had misunderstood the nature of the claim or the correct chronologies as set out in the grounds at [4].
10. Turning to the submission within ground 1 at [6], this is in effect that the judge had not given adequate reasons for rejecting the appellant's account to have been abducted by the Taliban. This was elaborated upon by Mr Mohsan who submitted that the judge had in fact failed to make proper findings as to relevant facts, that is in particular whether the appellant had been perceived by the Taliban to be an informant against them; and, that the judge had failed to make a finding that the appellant had been perceived by the government to be an informant on behalf of the Taliban against the government.
11. There is little merit in these submissions. It is not a requirement that a judge should make findings on every single factual issue. It is clear from the judge's decision that he was aware of that allegation put forward by the appellant, that is that he had been perceived to be an informant, and it is adequately stated in the decision [15] and [16] why the judge rejected that part of the account. It is also adequately reasoned [17] to [19] why the judge rejected the remainder of the account of what had happened to the appellant on return, his abduction and escape, and the claim that he had been assisted to do so. Again, the reasoning is adequate when seen in the context of the setting out of the claim, the perception of the witness statement and that this was all taken into account in the light of the background evidence.

12. I bear in mind that an Appellate Tribunal should be slow to reject findings of fact made by an inferior Tribunal which had the benefit of hearing evidence from the appellant. The reasoning is I consider adequate in the context and sustainable. There is in reality no direct attack against the findings of fact with regard to the appellant's account of why the Taliban would have perceived him to be an informant and whilst he says that he overheard that the judge rightly points out that there does not appear to be any basis as to why they would have done so.
13. Similarly, it cannot be said that the judge failed to make proper findings with regard to the appellant's claim to what happened to him on return to his home village. The judge conducted a proper analysis of the appellant's credibility and viewing the evidence as a whole, concluded that what had happened to the appellant on return to Afghanistan was not true. It is simply not the case that the judge had not considered the explanations given; it is sufficiently clear from references to the witness statement that he had read it and was aware of its contents.
14. Further, it is not arguable the judge had focused on the appellant's account of providing an offer of accommodation to the exclusion of other matters and for these reasons I reject ground 1.
15. I note in doing so that the appellant avers in the final sentence of paragraph 6 of the grounds the judge had failed to make findings of whether the appellant's leaving Afghanistan and return from the West would put him at risk. Mr Mohsan was unable to indicate to me where that submission case was put to the judge or indeed any material which would on that basis have permitted the judge to make a finding that the appellant was at risk either in his home area or elsewhere on that basis.
16. Ground 2. The judge's reasons for rejecting the submission that there would be very significant obstacles to the appellant's return to Afghanistan are brief. They are by reference to the refusal letter but there are also findings at the bottom end of paragraph [20] indicative that the judge found that the appellant was an able-bodied, single young man who could avail himself of the internal flight alternative, meaning that he could go to live in Kabul. That he might not have wanted to do so is not relevant, and even if, the reasoning set out by the judge in his decision was insufficient (which I find is not the case), it cannot be argued that on the findings of fact reached by the judge in which he rejected the entirety of the claim that there was any basis on which the appellant could on the material before the judge have succeeded in showing properly that he met the requirements of paragraph 276ADE(1)(vi). Further, whilst the appellant does say that he found no one in his home village the judge adequately found that the reason for the family not being there was not necessarily because of the Taliban and it cannot be argued that his findings in that respect are inadequate or insufficient.
17. It is beyond doubt that between the hearing of the appeal on 27 April 2021 and it being signed and sent for promulgation on 10 August 2021 that

there had been significant changes within the situation in Afghanistan. It is not in dispute that on 15 August 2021 Kabul finally fell to the Taliban. But this is not a case in which submissions were made to the judge or representations made after the hearing to the effect that a further matter ought to be taken into account or the hearing reconvened given what was the rapidly changing circumstances on the ground in Afghanistan. It is not for a judge to make a wide ranging evaluation of a rapidly changing situation on the ground when no submissions to that effect have been made and it is not at all clear what material the judge could properly have taken judicial notice of in assessing the claim and thus it cannot be said that ground 2 is made out.

18. Ground 3. For the same reasons as I have just given with regard to ground 2, I do not consider that the judge erred in not taking into account the situation changing on the ground. It is not for a judge of his own volition to reconvene a case or to request for information to be brought to his attention whilst it is pending, not least in a situation which was rapidly developing. It is of course open to the appellant to make a fresh asylum claim given the circumstances that now exist in Afghanistan. To a significant extent what is averred in ground 3 is with the benefit of hindsight.
19. Finally I do note as I raised with the parties that the judge simply does not address Article 15(c) at all. I asked Mr Mohsan if he had anything to say about that and he said that he did not. No application was made to amend the grounds to challenge that and in the circumstances for all the reasons I have given I conclude that the decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

### **Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 1 August 2022

Jeremy K H Rintoul

Upper Tribunal Judge Rintoul